

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LATWAHN MCELROY,
Plaintiff,
v.
GOMEZ, et al.,
Defendants.

) Case No.: 1:20-cv-00658-NONE-SAB (PC)
)
) ORDER DISCHARGING ORDER TO SHOW
) CAUSE AND GRANTING PLAINTIFF ONE
) FINAL OPPORTUNIY TO FILE AN AMENDED
) COMPLAINT
) (ECF No. 30)
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Plaintiff Latwahn McElroy is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the instant action on May 11, 2020

This case has a rather lengthy history given Plaintiff's failure to comply and/or respond to the Court's orders.

On June 11, 2020, the Court screened Plaintiff's complaint, found no cognizable claims were stated, and granted Plaintiff thirty days to file an amended complaint. (ECF No. 8.)

On this same date, Plaintiff filed a motion for appointment of counsel, which was denied, without prejudice on June 12, 2020. (ECF Nos. 9, 10.)

On June 15, 2020, Plaintiff filed a motion for a temporary restraining order. (ECF No. 11.) On June 16, 2020, the Court issued Findings and Recommendations recommending that Plaintiff's motion for a temporary restraining order be denied. (ECF No. 13.)

1 On June 17, 2020, Plaintiff filed a motion for appointment of counsel. (ECF No. 14.)

2 On June 18, 2020, Plaintiff filed a second motion for a temporary restraining order. (ECF No. 3 15.) On this same date, the Court denied, without prejudice, Plaintiff's motion for appointment of 4 counsel. (ECF No. 16.)

5 On June 22, 2020, the Court issued Findings and Recommendations recommending that 6 Plaintiff's second motion for a temporary restraining order be denied. (ECF No. 17.)

7 On July 16, 2020, the Court adopted the June 16, 2020 Findings and Recommendations in full, 8 and Plaintiff's first motion for a temporary restraining order was denied. (ECF No. 19.)

9 On July 20, 2020, the Court issued an order to show cause why the action should not be 10 dismissed for Plaintiff's failure to file an amended complaint. (ECF No. 20.)

11 On July 31, 2020, Plaintiff filed a request for an extension of time to comply with the order to 12 show cause, along with a separate petition for writ of mandamus, request for a preliminary injunction, 13 and request for appointment of counsel. (ECF Nos. 24, 25.)

14 On August 4, 2020, the Court discharged the July 20, 2020 order to show cause and granted 15 Plaintiff thirty days to file an amended complaint. (ECF No. 26.)

16 On August 12, 2020, the Court issued Findings and Recommendations recommending that 17 Plaintiff's petition for writ of mandamus, request for a preliminary injunction, and request for 18 appointment of counsel be denied. (ECF No. 27.)

19 On September 14, 2020, the Court issued another order to show cause why the action should 20 not be dismissed because Plaintiff failed to respond to the Court's screening order. (ECF No. 30.)

21 On September 22, 2020, the Court adopted the Findings and Recommendations in full and 22 denied Plaintiff's petition for writ of mandamus, request for preliminary injunction, and request for 23 appointment of counsel. (ECF No. 31.)

24 On September 24, 2020, Plaintiff filed a response to the Court's September 14, 2020 order to 25 show cause. (ECF No. 32.) In his response, Plaintiff argues that he is in need of appointment of 26 counsel and Defendants should be held liable. (Id.)

27 Plaintiff is advised that if he wishes to proceed with this action, he must file an **AMENDED** 28 **COMPLAINT** in compliance with the Court's June 11, 2020 screening order or the action will be

1 dismissed. Plaintiff's continued effort to stall this action by filing other non-meritorious requests will
2 not be tolerated. In addition, the Court has previously explained that extraordinary circumstances do
3 not exist for the appointment of counsel. (ECF Nos. 10, 16, 27.) At this juncture, Plaintiff's only
4 option to proceed with this case is to file an amended complaint, and no further orders to show cause
5 will be issued as the undersigned will issue Findings and Recommendations recommending dismissal
6 of the action.

7 Plaintiff is informed that in amending the complaint, the Court cannot refer to a prior pleading
8 in order to make his amended complaint complete. An amended complaint must be complete in itself
9 without reference to any prior pleading. Local Rule 220. Once plaintiff files an amended complaint,
10 all prior pleadings are superseded. Therefore, in an amended complaint, as in an original complaint,
11 each claim and the involvement of each defendant must be sufficiently alleged.

12 Accordingly, it is HEREBY ORDERED that:

- 13 1. The order to show issued on is DISCHARGED;
- 14 2. The Clerk's office is directed to serve Plaintiff with an amended complaint form;
- 15 3. Plaintiff is granted **thirty (30) days** from the date of service of this order in which to
16 file an amended complaint curing the deficiencies identified by the Court in its June 11,
17 2020 order;
- 18 4. The first amended complaint must clearly indicate "First Amended Complaint" and
19 state the case number for his action, Case No. 1:20-cv-00658-NONE-SAB (PC), on the
20 first page of his amended complaint;
- 21 5. Plaintiff is warned that failure to comply with this order will result in a
22 recommendation to the District Judge that this action be dismissed for failure to obey a
23 court order and failure to prosecute; and

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1 6. **Plaintiff is advised that any future failures to timely file will result in a**
2 **recommendation to dismiss his case for failure to prosecute. No further orders to**
3 **show cause will be issued since Plaintiff has had numerous notices in the past and**
4 **is aware of the consequences for not filing timely.**

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6 IT IS SO ORDERED.

7 Dated: September 28, 2020



UNITED STATES MAGISTRATE JUDGE

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